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October 3, 2022

VIA ECF

Honorable Gregory H. Woods
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007

Re: XXIII Capital Limited v. Decade, S.A.C., LLC et. al. (Case No. 17-cv-06910-GHW)

Dear Judge Woods:

As Your Honor is aware, we are general bankruptcy counsel to David W. Carickhoff, as the Chapter 7 trustee (the “Trustee”) of Decade S.A.C., LLC, Gotham S&E Holdings, LLC, Decade S.A.C. II, LLC, Decade Executives, LLC and Decade Contracts, LLC (collectively, the “Debtors”). Pursuant to Your Honor’s Order dated June 9, 2022 (Dkt. No. 348), we are writing to provide Your Honor with an update on the status of the Delaware proceedings.

Trial commenced in the Delaware action on October 12, 2021 where “[t]he sole issues reserved for trial [were] substantial performance and ratification.” (*See* Case No. 18-11668 (CSS), Dkt. No. 132 at 31). On the second day of trial, however, the Bankruptcy Court vacated its January 29, 2020 decision granting the Trustee’s motion for summary judgment and directed that “the [Bankruptcy] Court will proceed with a trial on the merits of the complaint . . . and any and all counterclaims.” (*See* Case No. 18-11668, Dkt. No. 253 at 3.) Trial thereafter continued on October 13-15, 26, 28 and November 16, 2021.

On October 29, 2021, the Bankruptcy Court ordered that the Court would “proceed with consideration of the issue of liability” and “if the [Bankruptcy] Court finds liability on behalf of the plaintiff on his claims or the defendants on their counterclaims; the [Bankruptcy] Court will schedule a trial on damages, if any, to be awarded at a time of mutual convenience to the [Bankruptcy] Court and the parties.” (*See* Case No. 18-11668, Dkt. No. 259.)

On December 27, 2021, the Bankruptcy Court entered its *Findings of Fact and Conclusions of Law*, in which the Court found in favor of the Goodwins on their previously dismissed counterclaims for fraud in the execution, fraudulent misrepresentation, and fraudulent inducement,

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and against the Trustee on his claim for declaratory judgment. (*See* Case No. 18-11668, Dkt. No. 271.)

Given his pending retirement, Bankruptcy Judge Sontchi continued any trial regarding damages *sine die*, pending transfer of the case to a new Bankruptcy Judge. The case has been reassigned to Judge Stickles, but a damages trial has not yet been scheduled. Since reassignment, the Trustee, 23 Capital and the Goodwins engaged in mediation, which was unsuccessful. Thereafter, Judge Stickles ordered the Trustee and the Goodwins to submit briefing on the legal issues regarding damages sought by the Goodwins (*See* Adv. Pro. No. 19-50095, Dkt. No. 330). The legal issues have been fully briefed and submitted to the Bankruptcy Court.

At this time, the Delaware proceeding is still pending and has not been fully resolved. We are available at the Court's convenience should Your Honor wish to address this matter further and the Trustee will continue to provide any updates that Your Honor may request.

Respectfully,

ARCHER & GREINER
A Professional Corporation

BY: /s/ Alan M. Root
Alan M. Root

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cc: All counsel of record (via ECF)